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**Subject:** Portland Harbor  
**Date:** 03/06/2010 03:19 PM  
**Attachments:** [Excerpts of 40 CFR Part 761.doc](#)

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Hi Lori,

I've been tasked with following up with you on a couple of items in your February 10 letter providing further clarification to the LWG on EPA's ARARs table.

One of those is the TSCA response, where you said:

"Regarding TSCA, we agree that a more specific regulatory reference is appropriate here. 40 CFR Part 761 specifically should be included, but not only for the PCB remediation waste provisions at Part 761.61. Other provisions of Part 761 may be found to be applicable or relevant and appropriate to the remedy, such as subpart 761.50, particularly the discharge limitation to surface water."

We are trying to make certain we are giving Carl the right advice here on when and how TSCA might apply. Our analysis is that portions of Part 761 will apply if sediments are dredged that exceed 50 ppm PCBs, with concentrations established using the sampling protocols of 40 CFR 761.340 et seq. (Subpart R-Sampling Non-Liquid, Non-Metal PCB Bulk Product Waste for Purposes of Characterization for PCB Disposal in Accordance With §761.62, and Sampling PCB Remediation Waste Destined for Off-Site Disposal, in Accordance With §761.61). Portions of Part 761 could also apply if the sediment or any other waste material removed from the Site is a "PCB waste" within the meaning of 761.50(b) in Subpart D, excerpts of which I've attached. Of the categories of "PCB wastes" to which Subpart D applies, the only ones that seem of even possible application are "PCB item" (e.g. if they happened upon an item like a capacitor or transformer in near shore dredging or excavation), "PCB bulk product waste" (which by definition only exists if the PCB concentration is greater than or equal to 50 ppm at the initial time of designation for disposal), or a "PCB remediation waste." The latter will generally only apply if the concentration of PCBs in the sediment exceeds 50 ppm. The exception would be if there are PCBs in the sediment that resulted from a spill, release or other unauthorized disposal that occurred after April 18, 1978 where the source material was greater than 500 ppm or after July 2, 1979 where the source material was greater than 50 ppm. Thus, whoever performs the remedy will need to consider the applicability of portions of Part 761 if they encounter sediments containing greater than 50 ppm or if it is discovered that spills did occur at a time and in concentrations that trigger the PCB Remediation Waste categorization.

With respect to the discharge limitation to surface water in 761.50(a)(3) (excerpts also included in the attached), our understanding is that this provision will apply only in a context where somewhere is otherwise "storing or disposing of PCB waste." So, similarly, that is something that would have to be taken into account if any of those categories of "PCB wastes" are encountered in the remedial actions and therefore need to be stored or disposed of. (In any case, it seems that Clean Water Act PCB criteria would be triggered long before the 3 ug/L concentration prohibition in this provision.)

Is this along the lines of what you were thinking?

(I also have a couple of questions about the state law ARARs, but I need to touch base with the LWG common consultants first to make sure I'm framing those correctly first.)

Thanks for your input.

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